IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

RSA.No. 57 of 2007()

AS.54/2005 of SUB COURT, MANJERI
OS.6/1997 of MUNSIFF COURT, MANJERI

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: APPELLANT/APPELLANT/DEFENDANT:

MOHAMED @ BAPPU, AGED 63 YEARS,
S/O.THECHIYODAN MOIDEEN KUTTY,CHEMBRASSERI AMSOM,
DESOM, ERANAD TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.P.M.KUNJIMOIDEENKUTTY
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

RESPONDENTS: RESPONDENTS/PLAINTIFFS:

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1. ALAVI, AGED 50 YEARS,
S/O. CHECHIYODAN MOIDEEN KUTTY,CHEMBRASSERI AMSOM
AND DESOM, ERANAD TALUK, MALAPPURAM DISTRICT.

2. PATHUMMA, AGED 58 YEARS,
D/O. THECHIYODAN MOIDEEN KUTTY,CHEMBRASSERI AMSOM
AND DESOM, ERANADA TALUK, MALAPPURAM DISTRICT.

3. THECHIYODAN MOIDEEN, AGED 61 YEARS,
S/O. ABUBAKER, THUVVOOR AMSOM, NEELANCHERI DESOM,
ERANAD TALUK, MALAPPURAM DISTRICT.

4. UMMUSALMA, AGED 38 YEARS,
D/O. THECHIYODAN MOIDEEN, PANDIKAD AMSOM,
KOLPARAMBA DESOM, ERANAD TALUK,MALAPPURAM DISTRICT

5. HASEENA, AGED 28 YEARS,
D/O. THECHIYODAN MOIDEEN, PAYYANAD AMSOM,
NELLIKUKTHU DESOM,ERANAD TALUK,MALAPPURAM DISTRICT

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR DELIVERED ON 04/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 57 OF 2007

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DATED THIS THE 4TH DAY OF APRIL, 2007

JUDGMENT

Defendant in O.S.6 of 1997 on the file of Munsiff Court, Manjeri is the appellant. Respondents are the plaintiffs. The suit was originally filed by first respondent and respondents 2 to 6 were subsequently impleaded as assignees of the first plaintiff. The suit was filed for permanent prohibitory injunction contending that plaint A schedule property originally belonged in jenmom to Kannoor Puthan madam and in 1950 first respondent obtained plaint A schedule property on an oral lease and has been in possession of the property as a tenant and while so, under Ext.A1 assignment deed dated 9.2.1973, he sold plaint B schedule property a portion of the A schedule property in favour of appellant, his son and retained plaint C schedule property, the remaining property and later as per Ext.A4 order in S.M.177 of 1994 he purchased the jenmom right and obtained Ext.A2 purchase certificate and he has been in possession of the property and appellant is attempting to trespass into the property and he has no right to do so and therefore he is entitled to get a decree for permanent prohibitory injunction. Appellant

in the written statement admitted the assignment under Ext.A1 but contended that plaint C schedule property did not belong to first respondent and he has not been in possession of the property and it was in the possession of the appellant as per lease before 1964 and he has purchased jenmom right in respect of the said property in O.A.1363 of 1976 and also jenmom right in respect of plaint B schedule property as per order in SM 180 of 1996 and obtained Exts.B1 and B2 purchase certificates and is in possession of plaint C schedule property and therefore respondents are not entitled to the decree sought for.

2. Learned Munsiff, on the evidence of PW1 and DW1 and Exts.A1 to A6 and B1 to B4 and C1 and C2, upheld the case of respondents that plaint C schedule property forms part of plaint A schedule property and after assigning plaint B schedule property, first respondent has been in possession of plaint C schedule property and appellant has no right or possession over the same and therefore respondents are entitled to the decree for injunction sought for. Appellant challenged the decree and judgment before Sub Court, Manjeri in A.S.54 of 2005. Learned Sub Judge, on re-appreciation of evidence, confirmed the finding of learned Munsiff and dismissed the appeal. It is challenged in

the second appeal.

3. Learned counsel appearing for appellant was heard. The argument of learned counsel was that there is no evidence to prove that first respondent was tenant of the plaint C schedule property and when Ext.A2 and B2 purchase certificates were produced, courts below should have entered a definite finding as to the validity of Ext.A2 or B2 and without deciding that question, should not have granted the decree sought for and on the evidence courts below should not have granted the decree in favour of respondents and therefore the concurrent decree and judgment are unsustainable.

4. On hearing learned counsel appearing for appellant, I do not find any substantial question of law involved in the appeal. The suit was only for injunction. The question to be decided is the possession of respondents on the date of institution of the suit. The appellant is none other than the son of original plaintiff, first respondent. Appellant is also admitting his right over plaint B schedule property derived from the first respondent under Ext.A1 sale deed executed by him. Under Ext.A1 only 56 cents was obtained by the appellant. The courts below, relying on Ext.A1, accepted the case of respondents that the entire property

belonging to first respondent was not transferred in favour of the appellant. What was contended by appellant was that first respondent was having only plaint B schedule property in his possession and that was transferred in his favour under Ext.A1 and thereafter first respondent had no property in his possession and therefore first respondent could not have purchased the jenmom right in respect of plaint C schedule property and courts below should have found that Ext.A2 is not valid especially when Ext.B2 purchase certificate was obtained by appellant in respect of plaint C schedule property. Case of appellant could have been accepted if Ext.A1 disclosed that the entire property belonging to first respondent was transferred in favour of appellant under the document. On the other hand, Ext.A1 establishes that remaining property was left with first respondent after assigning plaint B schedule property. The southern boundary shown in Ext.A1 is the remaining property of first respondent, establishing that only the northern portion of the property belonging to first respondent was transferred under Ext.A1. If the case of appellant about an independent lease in his favour and possession of the plaint C schedule property thereunder is true, southern boundary would have been shown as the

leasehold property of the appellant or at least the property in the possession of the appellant. Instead, what was stated as southern boundary in Ext.A1 is the remaining property belonging to the first respondent. Courts below rightly appreciated the said fact and found that after assigning plaint B schedule property, first respondent retained with him portion of the property obtained by him on lease. If that be so, first respondent is entitled to purchase the jenmom right from the Land Tribunal, as appellant has no case that his father was not a lessee under the jenmi. In fact after Ext.A1 assignment deed executed by first respondent in his favour and banking upon the lease originally obtained first respondent appellant obtained the purchase certificate in respect of plaint B schedule property evidenced by Ext.B1. It is that leasehold right over which the jenmom right was purchased by first respondent under Ext.A2 pursuant to Ext.A4 order. Ext.B2 purchase certificate was obtained by the appellant under Ext.A5 order, one year subsequent to Ext.A2 purchase certificate issued in favour of the first respondent. If first respondent is a cultivating tenant, as he should be, in view of the purchase certificate obtained by first appellant over plaint B schedule property and the jenmom right which vested with the

Government as on 1.1.1970 was assigned in favour of the first respondent as per Ext.A4 order in SMP 197 of 1994 and Ext.A2 purchase certificate, to first respondent, nothing was left with the Government to be assigned in favour of appellant under Ext.A5 order. Therefore appellant cannot claim any right by virtue of Ext.B2 purchase certificate and therefore the case built up on Ext.B2 was rightly not accepted by courts below. I find no merit in the appeal. It is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-